

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

WILLIAM H. ROGERS, JR. et al.,	)	
	)	Case No. 4:06CV00015
Plaintiffs,	)	
	)	
v.	)	<b><u>ORDER</u></b>
	)	
DOW AGROSCIENCES, LLC, et al.,	)	By: Jackson L. Kiser
	)	Senior United States District Judge
Defendants.	)	
	)	
	)	

For the reasons stated in the accompanying Memorandum Opinion, Defendants' Motions to Dismiss are partially **DENIED**, partially **GRANTED**, and partially **GRANTED WITH LEAVE TO AMEND FOR TWENTY (20) DAYS**. Due to the complexity of the various motions, my rulings are listed below according to claims in the original Complaint:

1. Motion to Dismiss Negligence against Defendants Dow, Timberland, Chemorse, and Provine: **DENIED**. Related to this is the Motion to Dismiss *Res Ipsa Loquitur*, which can neither be denied nor granted as *Res Ipsa Loquitur* is an evidentiary doctrine, and not a cause of action.
2. Motion to Dismiss Breach of Implied Warranties of Fitness For a Particular Purpose and Merchantability against Defendants Dow, Chemorse, Timberland: **DENIED**. The Motion is **GRANTED WITH REGARDS TO DEFENDANT PROVINE, ALTHOUGH WITH LEAVE FOR THE PLAINTIFF TO AMEND WITHIN TWENTY (20) DAYS**.
3. Motion to Dismiss Breach of Express Warranty is **DENIED** to all Defendants.
4. Motion to Dismiss Violation of the Magnuson Moss Warranty Act ("MMWA") is **DENIED** to

all Defendants except Provine, to which it is **GRANTED WITH LEAVE FOR THE PLAINTIFF TO AMEND WITHIN TWENTY (20) DAYS.**

5. Motion to Dismiss Trespass against Defendant Provine: **GRANTED.**

6. Motion to Dismiss Punitive Damages: **GRANTED WITH LEAVE FOR THE PLAINTIFF TO AMEND WITHIN TWENTY (20) DAYS** to all Defendants.

The Clerk is directed to send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

Entered this 31<sup>st</sup> day of October, 2006

s/Jackson L. Kiser  
SENIOR UNITED STATES DISTRICT JUDGE